



Staines, J. C., Aghtaie, N., & Roy, J. (2021). Gendered Justice: Inequalities in the Minimum Age of Criminal Responsibility in Iran. *Youth Justice*, 1-15. <https://doi.org/10.1177/14732254211022854>

Publisher's PDF, also known as Version of record

License (if available):  
CC BY

Link to published version (if available):  
[10.1177/14732254211022854](https://doi.org/10.1177/14732254211022854)

[Link to publication record in Explore Bristol Research](#)  
PDF-document

This is the final published version of the article (version of record). It first appeared online via SAGE Publications at <https://journals.sagepub.com/doi/full/10.1177/14732254211022854> . Please refer to any applicable terms of use of the publisher.

## University of Bristol - Explore Bristol Research

### General rights

This document is made available in accordance with publisher policies. Please cite only the published version using the reference above. Full terms of use are available:  
<http://www.bristol.ac.uk/red/research-policy/pure/user-guides/ebr-terms/>



# Gendered Justice: Inequalities in the Minimum Age of Criminal Responsibility in Iran

Youth Justice

1–15

© The Author(s) 2021



Article reuse guidelines:

[sagepub.com/journals-permissions](https://sagepub.com/journals-permissions)

DOI: 10.1177/14732254211022854

[journals.sagepub.com/home/yjj](https://journals.sagepub.com/home/yjj)**Jo Staines , Nadia Aghtaie and Jessica Roy**

## Abstract

Using the minimum age of criminal responsibility (MACR) in Iran as an illustration, this article explores the continued resistance against girls' rights in some Islamic countries. The gendered construction of childhood in Iran has resulted in a differential MACR, which for boys is notably higher than that recommended by the United Nations Committee on the Rights of the Child, yet for girls is unacceptably low. While breaches of girls' rights in other areas are defended on the grounds of paternalistic concerns, it is argued that the MACR is a religious-political decision that, in Iran, upholds the rights of boys but denies the rights of girls, propagating their wider subjugation.

## Keywords

gender, Iran, minimum age of criminal responsibility, religious pluralism, religious puberty, UNCRC

## Introduction

This article explores how Article 2 of the United Nations Convention on the Rights of the Child (UNCRC), non-discrimination, is breached by having a gender-specific minimum age of criminal responsibility in some countries. Drawing on a case study of Iran, the article argues that religious, political and cultural reservations to the UNCRC have meant that some children, primarily girls, do not have equal access to rights despite international agreement. The article first reflects on the problematic practice of entering reservations to the UNCRC and the particular challenges that arise when there is potential conflict between religious principles and children's rights. Focusing on Iran as an example, the article explores how a specific interpretation of Islam has created a dualist approach to children's rights, which discriminates against girls. This is illustrated through the low minimum age of criminal responsibility (MACR) of girls in Iran that, it is argued, should be challenged. The article concludes by proposing practical pluralism as a means to break the deadlock between the secular, universalist UNCRC and specific, relative religious beliefs.

---

## Corresponding author:

Jo Staines, Senior Lecturer, School for Policy Studies, University of Bristol, 8 Priory Road, Bristol BS8 1TZ, UK.

Email: [Jo.Staines@bristol.ac.uk](mailto:Jo.Staines@bristol.ac.uk)

## The UNCRC: Reservations About Reservations

That the UNCRC is the most ratified international treaty in history (Gadda et al., 2019) could be taken as an indication that there is widespread global acknowledgement that children are rights holders, entitled to a specific set of rights. However, the support for the Convention was ‘regrettably mitigated by the reservations’ entered against it (Schabas 1996: 472). While those drafting the UNCRC aimed to establish a set of agreed rights for all children regardless of gender, dis/ability, culture or any other factor (Thomas, 2011), they did so while recognising the importance of culture and religion to children, families and societies. To facilitate the UNCRC’s passage and ratification, it was necessary to allow some measure of flexibility in interpretation and implementation, such that State parties were able to ostensibly commit to universal rights yet still uphold specific cultural, social and/or religious principles.

State parties thus were able to enter reservations to specific articles within the UNCRC and/or a general reservation to the Convention, on the grounds that the principles and provisions are not consistent with the cultural context or existing domestic legislation. While there has been a failure to implement all human rights treaties, the level of reservation entered against the UNCRC was particularly high (United Nations, 2020). Indeed, over 40 signatory states expressed concerns, limited support or added caveats on the scope and operation of specific articles within the UNCRC (Birnbaum et al., 2014; Cregan and Cuthbert, 2014; McCall-Smith, 2019), thereby, ignoring or failing to implement specific elements of the UNCRC where they were deemed to conflict with cultural, religious or ‘traditional’ practices, or where there were competing financial, social or public demands. For example, the United Kingdom entered a reservation (albeit now withdrawn) against Article 22, the rights of refugee and asylum-seeking children; Australia entered a reservation against Article 37, specifically against the need to hold imprisoned children separately from adults; and Canada reserved the right not to apply the provisions of Article 21, governing adoption, as being inconsistent with customary forms of care.

As with the Convention on the Elimination of All Forms of Discrimination Against Women 1979, the UNCRC received the most religion-based reservations by Muslim states, either against the treaty as a whole or against specific articles (Hashemi, 2007). Although some of the concerns raised by Islamic states were taken on board during drafting of the UNCRC, leading to significant amendments to Articles 14 and 20, for example, reservations to its implementation were still made. For instance, six Muslim states (Qatar, Iran, Saudi Arabia, Brunei Darussalam, Syria and Oman) entered General Sharia Based Reservations, while others entered Specific Sharia Based Reservations against individual articles (Hashemi, 2007). For example, both Iraq and Morocco entered specific reservations against Article 14, stating that Islam is the state religion and, therefore, freedom of choice in religious matters is not an option (Habashi, 2015; Langlaude, 2008).

Neither the Committee nor the Convention provides guidance on how to resolve the inherent religious tensions that were raised during the processes of developing and ratifying the UNCRC nor provides an answer to how potentially harmful religious practices can be managed (Freeman, 1998, 2011b; Langlaude, 2008). These tensions can be understood as conflict between different communities of judgement, with competing communities claiming that they provide the appropriate framework for judging (Freeman, 2011). Each

community interprets children's rights according to their own cultural, economic, political and religious situation, with the rights assigned under UNCRC undergoing a 'cultural journey' (Quennerstedt, 2012: 104), as they are transformed from the universal level to the particular context. However, not all cultural and religious interpretations of rights are acceptable to children's rights advocates, as they may conflict with a child's best interests (Article 3) or other rights within the UNCRC. Furthermore, the UNCRC expects 'due account' to be taken of traditions and cultural values and recognises that the child's welfare may be 'trumped' in certain situations by cultural values and traditions (Freeman, 1998: 438). Children's rights are, therefore, not always respected and are sometimes openly violated (Collins, 2019; Gadda et al., 2019).

Arguably, allowing reservations may represent a compromise enabling states to ratify treaties that they otherwise would not endorse. In the case of children's rights, this may mean that children at least have access to some of their UNCRC defined rights and allows some acknowledgement of culture. However, the entering of reservations against specific articles of the UNCRC means that states can take a 'pick and mix' approach to rights such that children in different countries have very different experiences of being rights holders, and have led to the selective use of the UNCRC, with state parties citing it when convenient and ignoring it when it is not – either in its entirety or in its constituent parts (Freeman, 2011).

Entering general or specific reservations is thus contentious, particularly when it leads to widespread discrimination, as has occurred in Iran. Kilkelly (2019) argues that implementing the UNCRC wholesale cannot be disputed and that the provisions of the Convention are indivisible and inter-dependent; as such states should not be able to selectively refuse to accept specific articles with which they disagree. Indeed, the United Nations Committee on the Rights of the Child (UNCRC, 2016a) has expressed concern about the imprecise and broad nature of the wording of reservations that may affect the implementation of rights, and which may raise questions about the compatibility of the reservations with the intent and purpose of the UNCRC (see also Hashemi, 2007; Schabas, 1996). For example, the general reservation entered by Iran says,

The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect

This enables the government to veto its commitment to children's rights if they are deemed not to be in accordance with Sharia law. Furthermore, a judgement made by the Iranian Supreme Court in July 2012 states that in the case of a conflict between domestic legislation and the Convention, the former should prevail (UNCRC, 2016a). In essence, general reservations such as that made by Iran demonstrate that there is ongoing resistance to the concept of children's rights itself; objecting to any one Article or denying any specific right, indicates a more fundamental objection to the underlying principle of children as rights holders.

Arguably, the general reservation made by the Iranian State disproportionately discriminates against girls, in breach of Article 2 of the UNCRC – a general principle of the

Convention that is considered by the Committee on the Rights of the Child to be fundamental to the implementation of the Convention. Concerns about gender discrimination were identified as early as 1995 with the ‘Day of Discussion’ focusing on the ‘serious and unresolved of inequality and indifference, manifested by discrimination, neglect, exploitation and violence’ (UNCRC, 1995: 48) which girls (and women) experience. The Committee noted that cultural traditions and prejudices were the primary barrier to girls and women being able to access their rights as laid out in international law. These included issues such as education, the differential age of child marriage, female genital mutilation and the ‘traditional’ caring roles girls were expected to take on. In 1995, the Committee recommended that state parties should enshrine in law the principles of non-discrimination (reflecting Article 2 of the UNCRC), however, the issues of gender discrimination remain a significant global issue, particularly when legitimised through particular religious beliefs and practices.

## Religion and Children’s Rights

The universality of international treaties has been contested in light of the different conceptions and experiences of childhood that exist across the globe (Bentley, 2005), and it is recognised that points of conflict and dissonance are the inevitable result of different cultural and religious contexts, wherein attitudes to children – and children’s rights – vary significantly (Burr, 2004). It can be argued that the UNCRC represents a particular, Western, individualistic and secular model of childhood. Attempts to impose these values and standards on countries with a different moral, cultural and/or religious frame of reference (Cregan and Cuthbert, 2014; Thomas, 2011) raise questions about its legitimacy, appropriateness and effectiveness. Indeed, it has been recognised that childhood cannot be understood outside the context of other factors including gender, class, ethnicity and culture (Freeman, 1998) – a list to which religion should be added.

It must be noted that any discussion of the role of religion in children’s lives is likely to be controversial: religion is an emotive, complex subject, which matters greatly to children, parents, religious communities and the state (Langlaude, 2008). A majority religion may be a core part of a nation’s identity and discourse (Habashi, 2015), and therefore, matters challenging one’s understanding of religion may also present uncomfortable challenges to the national identity, social traditions and customs. Particular tensions may arise when the teachings of a religion are interpreted in a manner that conflicts with, or ultimately denies, children’s rights (Freeman, 2011; Watson et al., 2015). Religious followers may argue that it is in the best interest of the child to be brought up as a religious being and to belong to a religious community (Langlaude, 2008), yet aspects of the religion may constrain universally agreed rights, potentially causing harm. Some of these tensions may affect the rights of both adults and children (such as gender discrimination, as noted earlier), whereas others are specific to children (e.g. adoption practices, child marriage or religious practices such as circumcision – both male and female). As will be discussed below, a gender-biased reading of religious texts does not equate to the religion itself and, therefore, by challenging the MACR within the Iran context, Islamic teaching is not being refuted, the challenge is instead against the distorted interpretation by the Iranian State. It

is noted, for example, that alternative interpretations of Islamic law within other majority Muslim countries have not led to a gender differentiated MACR. At the same time, it should be acknowledged that the approach presented here maybe refuted by some scholars who believe the Islamic texts structurally marginalise women and sanction imbalanced gender power and, therefore, that they should be abandoned all together (for further discussion, see Kusha, 2002). However, a monolithic understanding of Sharia law does not leave room for negotiating how the UNCRC could be implemented in the Islamic world.

## Iran: Intra-Country Dualism and the Resistance to Children's Rights

That children's rights differ significantly *between* countries is widely acknowledged but there is further differentiation *within* some countries. This is particularly problematic where there are systems of legal dualism; that is, where there are separate systems of law that govern aspects of individuals' lives. In these situations, a child's access to their rights may be dependent on gender, age, religion and/or ethnicity. For example, in Israel, criminal legislation has a differential construction of childhood, based on national lines within the Occupied Palestinian Territories: the age of majority (adulthood) for Israeli settlers is 18 years, compared with just 16 years for Palestinians (Viterbo, 2012). Furthermore, Palestinian children may experience rights' violations, such as detention, inhibition of movement and control of health care and education, due to Israeli occupation (Habashi, 2015).

Intra-country dualism is particularly apparent in Iran, where the commitment to international standards of rights for children, such as the UNCRC, is deemed subordinate to the principles of Sharia (Rajabi-Ardeshiri, 2009). As noted earlier, the importance of religious principles was overlooked by those drafting the UNCRC, and there was arguably a lack of cultural sensitivity in understanding how children's rights are framed within Sharia. While the UNCRC takes a secular, individualistic approach to rights, Sharia places a much greater emphasis on children's position within their family and family circumstances (Habashi, 2015). A strong generational hierarchy excludes children from involvement in decision-making (Rajabi-Ardeshiri, 2009) and children's rights are enmeshed with the rights of their parents (Habashi, 2015). As noted earlier, the Iranian Supreme Court issued a judgement in 2012 that stated that domestic (Sharia) legislation should prevail over the UNCRC, effectively enabling the rights of children to be disregarded whenever they conflict with or challenge the interpretation of Sharia. This reservation has allowed a 'cloak of Islam' to be pulled over the UNCRC to justify the denial of both specific rights and the general concept of children's rights. However, this had a significantly more negative affect on girls than boys, due to gender discrimination inherent within the dominant interpretation of Islam within the Iranian context.

The incorporation of religious beliefs into legislation and policy in Iran stems from the process of Islamisation that began after the Iranian Revolution in 1979. This had a significant influence on gender roles and expectations for girls and women within Iran, and on their status as rights holders within the family and society (Author, 2015).<sup>1</sup> When the



Revolutionaries overthrew the Shah, Ayatollah Khomeini (a cleric) took over as the religious leader. He set in motion a process of Islamisation which affected the Iranian people – both adults and children – within private and public realms (Paidar, 2001; Author, 2015, 2016), rescinding some of the relatively progressive policies that had been implemented during the White Revolution (1963–1979; Moghadam, 1999). Clerical rule and the rapid Islamisation of legislation brought about a profound change in the Civil and Penal Codes of the country. For instance, the Islamisation of laws meant that the Family Protection Law of 1967 (which had been more gender-egalitarian; see Keddie, 2000) was immediately annulled and a new Family Law was introduced. The new Family Law stressed the notions of men as women's guardians and of male ownership of female bodies (Aghtaie, 2015, 2016) and, as such, had a detrimental impact on the female population of Iran.

Many of these legal changes resulted from the idea of 'sanctioned guardianship', which extended a husband's right to control his wife's mobility and employment, police her sexuality and gain total control over the marital bed (see, for example, Civil Code of Iran, Articles 1105 and 1117; Birnbaum et al., 2014; Paidar, 2001; Aghtaie, 2015, 2016). This sanctioned guardianship assumes that men are naturally wiser and more capable than women in making decisions (Aghtaie, 2015). Scholars such as Afshar (1982) and Yeganeh (1982) believed that clerics such as Khomeini and Motahhari, his foremost ally, were adamant that women are inferior to men because of their alleged inherent emotional sensitivity and deficient rational judgement. Motahhari (1979) repeatedly stated that men are rational and women emotional, presumptions that were reiterated by other religious scholars:

The female brain has a larger capacity for dealing with emotions, creativity, and spirituality, whereas the male brain has more capacity to deal with deliberate and abstract thought. In light of these differences, men and women are believed to have equal but different rights. (Bahonar, 1984: 155)

Bahonar (1984) condemned the Western assumption that having the same quantified rights conveys equality between genders. It is worth noting that, at the time of Bahonar's comments, the consensus in the West on gender equality was relatively recent and was – indeed still is – contentious, but he echoed Motahhari's views, stating that women and men are naturally different from each other and, therefore, although they should enjoy equivalent human rights, their inherent differences produce different rights and obligations. This belief led to other gender discriminatory practices supported by clerical rule, including reinstating men's unilateral right to divorce (Civil Code, Article 1133), men's right to polygamous marriages (Civil Code, Article 942) and designating the husband as the head of family (Civil Code, Article 1105). Furthermore, within the criminal courts, women's rights can only be discussed and decided upon by religious male figures in Iran – seemingly due to assumptions made about their inability to engage in 'deliberate', 'rational' and 'abstract' thought, as noted earlier. At the same time, women and girls are held accountable for the moral corruption of men and are thus expected to wear the hijab to protect men from moral and social 'dangers'. Thus, women and girls are simultaneously being constructed as both in need of protection due to their own incompetence and as a threat to men who require protection from women's inherent sexuality.

The Iranian State's interpretation of Sharia exacerbated gendered expectations and propagated a gendered construction of childhood, which has legitimised wider rights' abuses and discrimination against girls. Girl children were particularly impacted by the changes to marital legislation within the Civil Code, with girls being able to be married at an earlier age than boys, which may limit their right to freedom in matters of reproductive health (Birnbaum et al., 2014). Earlier marital age may also have a negative impact on young girls' ability to access education and economic opportunities, and places them at risk of sexual violence, including marital rape (UNCRC, 2016a). Religious principles set by the Iranian State have thus been used to play a significant role in the repression of women and children, particularly female children, with constitutional, educational and legal systems systematically enforcing gender discrimination from an early age. For example, the Civil Code of Iran pertains to children's upbringing and indicates that, although both parents are responsible for their children's upbringing (Article 1168), priority is granted to the father. Male guardianship excludes mothers from the management and supervision of their children's affairs beyond infancy (Civil Code, Article 1181 and 1169). Article 1169 specifically states that male children below the age of two are under the care of their mothers, but after that the father is given custody. However, this differs for female children whereby fathers are awarded custody when the female child reaches the age of seven.

The gendered interpretation of Sharia in Iran thus gives rise to a dualist approach to the rights of boys and girls. This discrimination against girls in Iran is particularly evident within criminal law, whereby the MACR for girls is set at just nine lunar years old, compared with 15 lunar years for boys, and it is to this discrimination that the article now turns.

## Determining the Minimum Age of Criminal Responsibility

There is no categorical international standard MACR, but the provisions of several international human rights instruments are pertinent (see Goldson, 2013). The UN Committee on the Rights of the Child recommends a separate justice system for all those aged below 18 and supports those states which apply protections to children up to the age of 21. Article 40 (3) of the UNCRC states that children in conflict with the law have the right to be treated:

... in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and **which takes into account the child's age** and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. (UNCRC, 1989, emphasis added)

The ratification of the UNCRC requires states to establish an age of criminal responsibility below which children will be presumed not to have the capacity to infringe the criminal law, taking into account their likely maturity. Rule 4(1) of the Beijing Rules (United Nations, n.d) states that

In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.



More recently, the United Nations Committee on the Rights of the Child (2019) has recommended that the MACR should be a minimum of 14 years. However, this is a recommendation rather than being legally binding and there is still a margin of discretion that has contributed to significant global variation in the MACR. In many jurisdictions, the basis for ascertaining the MACR often reflects political, cultural, social or religious beliefs and constructions of childhood, rather than being informed by an understanding of psychology, neurology, emotional development or a commitment to children's rights.

Most commonly, the worldwide MACR is 14 years (Hazel, 2008); indeed, Iran is arguably progressive in that the MACR for boys is 15 years. Lower ages of criminal responsibility are not uncommon across the world; for example, in the United States, only 22 states have a set MACR and these range from 6 to 12 years old (National Juvenile Defender Center (NJDC), 2020); in other states, children of any age may be held to be criminally responsible. The MACR in Belize is 11 years; in England, it is 10 years; and in Kenya, it is just 8 years old (see Child Rights International Network, n.d.). In many of these cases, it is evident that the MACR is a political choice rather than reflecting children's competency, development, or rights.

## **A Gendered Minimum Age of Criminal Responsibility**

Contextually, in Western states, girls have been subject to different standards than boys within justice systems, for example, regarding crimes of 'sexuality' (Pasko, 2017) or the provision of custodial placements within England and Wales, whereby there are no specific custodial facilities for girls and young women (Allen, 2016). However, most countries do not differentiate between boys and girls in matters of civil or criminal rights and responsibilities, including the MACR. However, within some Islamic countries, such as Iran, the gendered construction of childhood has resulted in a system of divided rights, with specific rights being granted to some children (boys) but not others (girls). By using the notion of 'religious puberty' as a measure of maturity, Iran, and some other Islamic countries such as Brunei Darussalam, Sudan, Saudi Arabia and the United Arab Emirates, enable overt discrimination against girls, because the age at which religious puberty is deemed to have been reached differs between boys and girls. The age of religious puberty is specified within the Civil Code of Iran and is considered to be the age at which a child is subject to all the rights, duties and responsibilities of an adult, including property ownership, marriage, religious duties and criminal responsibility (Hashemi, 2007). Boys in Iran are considered to have such responsibility when they are 15 lunar years old (14 years and 7 months), whereas girls are considered to have reached religious puberty a full 6 years earlier, at 9 lunar years (8 years and 9 months). The Islamic Penalties Act (2013) does not itself specify a chronological age of criminal responsibility, but effectively establishes it by reference to religious puberty, such that girls are held criminally responsible at the age of 9 lunar years, whereas boys are not deemed to have such responsibility until they are 15 years.

The MACR in Iran thus is not delineated by the recommendations of the UN Committee on the Rights of the Child nor on an understanding of child development but is based on powerful religious doctrine – the interpretation of which is used to mask the commitments

to the UNCRC. It is of note that 15 years old is a reasonable MACR and is above the UNCRC's suggested minimum (UNCRC, 2019) and higher than the median age across the globe. This apparent accordance with international guidance – for boys – makes the low MACR for girls even more unacceptable. Indeed, the *Concluding Observations on Iran* made by the UN Committee (2016a) reiterated the need for Iran, as a matter of priority, to increase the MACR for girls and ensure that girls and boys are treated on equal terms throughout the criminal justice system. Furthermore, the Committee questioned the wide discretion given to the judiciary in interpreting and implementing Sharia, such as relating the age of marriage and the age of criminal responsibility to the notion of religious puberty, especially when there is limited justification for the specific age at which religious puberty is deemed to have been achieved.

The gendered approach to the MACR in Iran creates a 6-year disparity between the protections ascribed to boys and girls; this disparity perpetuates the perceived difference in capacity and status between girls and boys in other areas too. Setting an MACR of 9 years creates a social (symbolic) and statutory (institutionalised) construction of the girl child as being mature, responsibilised and adultified (Goldson, 2013). This image of a mature girl child can then be used to further subjugate girls to the control of men, for example, constructing girls as sexually mature – and therefore, sexually available and of an age to be married. Setting a low MACR, linked to the notion of religious puberty, does not take into account the impact of social conditions on children's development or their ability to exercise free will. This may be particularly an issue for women and girls in Iran who face subjugation and control in so many areas of their lives (Kusha, 2002). For instance, in the legal system of the Islamic Republic of Iran the gender of the witness influences the perceived validity of the testimony. In some cases, the testimony of a woman is only used to substantiate a man's testimony and in others, where the testimony of a woman is considered valid, the testimony of a man is deemed equivalent to the testimony of two women (Mehrpoor, 2002). This illustrates the contradictory nature of the Iranian gender ideology: on one hand, girls are deemed mature and hence responsible for their actions, yet on the other hand, when they reach the age of puberty, their rationality is questioned due to their gender.

## Challenging the Resistance to the Rights of Girls

The powerful influence of religion within Iran, illustrated here through the gendered delineation of the MACR, raises questions about Iran's wider commitment to children's rights, and particularly the rights of girls. Some Muslim feminists argue that some of the laws are dated and should not apply to the current era, suggesting that the sacred text should be reinterpreted. They believe that gender equality can be achieved if Sharia is read and interpreted through a feminist lens and by utilising dynamic *ijtihad*<sup>2</sup> (Afshar, 1998; Mir-Hosseini, 1996). Others, such as Mojab (1995), argue that, even if feminist interpretations are adopted in order to reform discriminatory laws, this would entail a radical change or even the abandonment of its theological basis due to Sharia's deeply rooted patriarchal nature. Mojab (1995) does not dispute that patriarchy cannot be reduced to religion but is adamant that it would not be possible to 'degenderise' Islam and

transform it into an ideology that is gender neutral. A more optimistic view is adopted here, in the belief that religion does not need to be rejected to be able to enhance and uphold children's rights. The plurality of interpretations of Islamic texts in different contexts, and the impact of Muslim feminists' stance on improving women's position, is a valid indication of the potential for change.

The impact of the UNCRC in Iran remains limited (as it does in many countries). The UN Committee on the Rights of the Child has no power to impose any significant penalty against countries that do not uphold children's rights (Hoffman, 2019). For example, the Committee's concluding observations have made little or no difference in Israel where the differential demarcation of childhood along national lines (16 years for Palestinians and 18 years for Israelis in occupied territories) has been repeatedly denounced (Viterbo, 2012) or England, where the MACR remains at age 10, despite recurrent criticism. Without judicial enforcement, the ratification of the UNCRC is – arguably – just 'window-dressing' and not used as the basis for policy or practice (Hoffman, 2019).

However, while doubts have been raised about the utility of the UNCRC in bringing about meaningful changes in state behaviour, there is evidence that the CRC has been effective at encouraging change in many countries. When the MACR of 10 years was proposed in Ireland, the Committee intervened and it is now 12 years (with safeguards to the age of 14; UNCRC, 2016b). In Nepal, significant changes were made to the juvenile justice system on recommendations made by the CRC in concluding observations (although notably the MACR remains at 10 years; Save the Children, 2009). In these examples, as others, being part of the monitoring process has been a means by which change has been influenced and guided by the UNCRC.

Nonetheless, problems commonly arise in enforcement when the UNCRC is in conflict with national law, policy or practice. This is particularly difficult when it conflicts with the majority religion, as it requires understanding and perhaps challenging the fundamental principles of the religion – which, as noted earlier, may be intrinsically entwined with national identity and narrative (Habashi, 2015). The premise of the UNCRC remains in competition with Iran's interpretation of Sharia and how it frames laws for children (Habashi, 2015). Hoffman (2019) found that there was judicial reticence to trespass on perceived terrain of elected politicians in the United Kingdom and it is highly feasible that there is similar reticence to challenge predominant religious views in countries such as Iran. However, there is a need to articulate the tensions between religious and secular interpretations of children's rights, to enable progress towards equal rights and protection for boys and girls.

The dispute presented in this article is between the gender-equal, 'universal' stance of the UNCRC and the gendered, cultural relativist interpretation of Sharia in Iran, which has been used to justify an only partial acceptance of children's rights. Arguably, attempting to resolve this conflict through the implementation of new legislation, or increasing the enforceability of existing standards through the imposition of sanctions is likely to be unsuccessful: the UNCRC can be seen as an unwelcome, external imposition that goes against the grain of traditional values (Thomas, 2011). Any additional legislation or sanctions are thus likely to be ignored or refuted, especially if enforcement and the threat of sanctions only target Muslim countries and ignore the reservations that have been put in

place by the global north. Instead, it may be more productive to understand the impact of religion through the lens of cultural – or religious – pluralism (Freeman, 2011).

## **Concluding Thoughts: Religious Pluralism – A Way Forward?**

Relying on cultural relativism allows difficult moral questions to be ‘fudged’ (Freeman, 1998) with challenging practices being accepted on the grounds of tradition or custom. By contrast, cultural or religious pluralists believe there are many reasonable conceptions of a good life, and many values upon which this realisation can depend (Freeman, 1998). However, even if a pluralist approach is accepted, there still needs to be agreed basic standards that countries will uphold; where there are conflicts between these conceptions and values, political ethics need to surmount them. This article echoes the view that, instead of confrontation, key parties need to engage in dialogue with the aim of enlarging a shared common sense or understanding (Freeman, 2011). Using a model of religious pluralism allows us to envisage how cultural or religious practices may be reconciled with children’s rights.

The UN Committee has stated a preference for a wider interpretation of religious texts and welcomes those interpretations that are consistent with human rights standards, encouraging states to consider the practices of other Muslim states who have successfully reconciled Islamic texts and human rights (Hashemi, 2007). The Committee has also recommended mobilising religious leaders to be gender sensitive – which may also then influence government organisations (including schools and institutions) that are led by religious leaders. However, it has stopped short of identifying specific good examples of countries that balance adherence with principles of faith with children’s rights (Hashemi, 2007; Hoffman, 2019) – perhaps doing so would help other countries develop a similar stance.

There are relevant examples from other Muslim majority countries that could be promoted as models of gender equality. For example, legislation and policy in other Islamic countries demonstrate that there can be multiple ways of interpreting Sharia, some of which may be more aligned with the principles of the UNCRC. As noted earlier, other majority Islamic countries do not differentiate between children on the basis of gender and have MACR that are non-discriminatory (Child Rights International Network, n.d.). There are also examples of how mobilising religious leaders can be successful – for instance, there has been progress in Iran in relation to child execution whereby the child’s best interests are now taken into consideration and may lead to a reduced sentence (Aghtaie and Staines, in press), highlighting the value of collaboration between religious figures. Perhaps Iranian lawmakers, religious leaders and politicians can be encouraged to further consider how other Muslim nations manage to integrate the UNCRC without transgressing Islamic principles.

The challenge, thus, is to enable the interpretation and implementation of the provisions of the UNCRC in a culturally sensitive, nuanced way that ensures children’s rights make sense in different cultural and religious contexts, and which reduces resistance to the concept of children’s rights. Merely arguing that the provisions of the UNCRC must be implemented is unlikely to achieve change; rather, an interpretation of Sharia that does

not justify privileges for boys over girls and that commits to children's rights per se needs to be encouraged (Rajabi-Ardeshiri, 2009). There is a need to develop an approach to religious interpretation that can integrate legal traditions with modern universal values (Hashemi, 2007). This requires a multi-faceted approach, for example, emphasising areas of consensus among Muslims, such as Islamic principles of tolerance and equality. The plurality of religious interpretation and its fruitfulness has been evident in Muslim feminists' efforts to change some of the gender discriminatory laws in Iran that had produced fertile grounds for violence against women.

However, successful implementation of the UNCRC begins with acceptance of the idea that children have rights and the creation of a culture of support for children's rights among society, the public and the media (Hoffman, 2019; Kilkelly, 2019). In this instance, there needs to be acceptance of the idea that all children have rights, and that girls have equal rights to boys. State bodies – be they religious authorities, or governments – need to collaborate with private and public sectors to develop a shared ideology that informs legislation and policy (Gadda et al., 2019). Legislation resulting from such collaboration may confirm internationally accepted rights of protection and provision; additional legislation provides a symbolic commitment to specific rights based expectations (Hoffman, 2019). This legislation can also provide a platform for constructive dialogue on children's rights within and across states, which could support the cultural transformation required to ensure the implementation of child rights (Collins, 2019).

Progress in recognising and upholding children's rights requires the acceptance and involvement of a wide range of actors, including – but not limited to – parents and wider families, non-State services and organisations, non-governmental organizations (NGOs), businesses, media and academics (Collins, 2019) – a list which should also include religious authorities. These individuals, organisations and authorities need to facilitate dialogue that addresses the tensions between a relativist reading of Sharia and the universalist, secular interpretation of children's rights within the UNCRC, to encourage a more contemporary reading of Islam that acknowledges modern societal challenges and expectations (Habashi, 2015), such as the equal and non-discriminatory treatment of boys and girls.

## Funding

The author(s) received no financial support for the research, authorship and/or publication of this article.

## ORCID iD

Jo Staines  <https://orcid.org/0000-0001-7285-496X>

## Notes

1. This is not to say that girls and women were completely liberated prior to the succession of the Revolution and many of the new policies had their roots in the past. Hence, the imposition of Sharia merely reinforced the status quo because many of the articles from the Civil and Criminal Codes of Iran had been based on Sharia prior to the Islamic Revolution (Aghtaie, 2015: 594).
2. Muslim feminists use the notion of dynamic *ijtihad*, independent reasoning, to find an Islamic solution to the issues pertaining to gender in/equality (Fazaeli, 2007). They dispute the argument that only men are qualified to exercise *ijtihad*. They insist that historically male religious elites with a discriminatory lens have had a monopoly on the practice of *ijtihad*.



## References

- Afshar H (1982) Khomeini's teachings and their implications for women. In: Tabari A and Yeganeh N (eds) *In the Shadow of Islam*. London: Zed Press.
- Afshar H (1998) *Islam and Feminisms*. New York: St. Martin's Press.
- Aghtaie N (2015) Men as women's guardians: Domestic violence in Iran. In: Aghtaie N and Gangoli G (eds) *Understanding Gender-based Violence: National and International Contexts*. London: Routledge.
- Aghtaie N (2016) Iranian women's perspectives on violence against women in Iran and the UK. *Iranian Studies* 49(4): 593–611.
- Aghtaie N and Staines J (in press) Child execution in Iran: Furthering our understanding of child execution as a form of structural violence. *Critical Criminology*.
- Allen R (2016) *Meeting the Needs of Young Adult Women in Custody*. London: T2A.
- Bahonar MJ (1984) *Eslam va hoghughe zan (Islam and Women's Rights)*. Qom, Iran: Al-Tawhid.
- Bentley KA (2005) Can there be any universal children's rights? *The International Journal of Human Rights* 9: 1.
- Birnbaum L, Cetinkaya H and Harper E (2014) *Legal Status of the Child: Iran's International Human Rights Obligations* (Legal Research Series). Colchester: Human Rights in Iran Unit, University of Essex.
- Burr R (2004) Children's rights: International policy and live practice. In: Kehilly MJ (ed.) *Childhood Studies: An Introduction*. Maidenhead: Open University Press, 145–159.
- Child Rights International Network (n.d.) Minimum ages of criminal responsibility around the world. Available at: <https://archive.crin.org/en/home/ages.html>
- Collins TM (2019) The general measures of implementation: Opportunities for progress with children's rights. *The International Journal of Human Rights* 23: 338–356.
- Cregan K and Cuthbert D (2014) *Global Childhoods: Issues and Debates*. London: Sage.
- Fazaeli R (2007) Contemporary Iranian feminism: Identity, rights and interpretations. *Muslim World Journal of Human Rights* 4(1): Article 8.
- Freeman M (1998) The sociology of childhood and children's rights. *The International Journal of Children's Rights* 6: 433–444.
- Freeman M (2011) Culture, childhood and rights. *Family in Law Review* 5(29): 15–33.
- Gadda AM, Harris JE, Tisdall KM and Millership E (2019) 'Making children's rights real': Lessons from policy networks and contribution analysis. *The International Journal of Human Rights* 23: 392–407.
- Goldson B (2013) 'Unsafe, unjust and harmful to wider society': Grounds for raising the minimum age of criminal responsibility in England and Wales. *Youth Justice* 13(2): 111–130.
- Habashi J (2015) The Palestinian path to the Convention on the Rights of the Child: Anticipation and discussion. *Global Studies of Childhood* 5(2): 122–131.
- Hashemi K (2007) Religious legal traditions, Muslim states and the Convention on the Rights of the Child: An essay on the relevant UN documentation. *Human Rights Quarterly* 29(1): 194–227.
- Hazel N (2008) *Cross-National Comparison of Youth Justice*. London: Youth Justice Board.
- Hoffman S (2019) The UN Convention on the Rights of the Child, decentralisation and legislative integration: A case study from Wales. *The International Journal of Human Rights* 23: 374–391.
- Keddie N (2000) Women in Iran since 1979. *Social Research* 67(2): 405–438.
- Kilkelly U (2019) The UN convention in the rights of the child: Incremental and transformative approaches to legal implementation. *The International Journal of Human Rights* 23: 323–337.
- Kusha R (2002) *The Sacred Law of Islam: A Case Study of Women's Treatment in the Islamic Republic of Iran's Criminal Justice System*. Hants: Ashgate.
- Langlaude S (2008) Children and religion under Article 14 UNCRC: A critical analysis. *International Journal of Children's Rights* 16: 475–504.
- McCall-Smith K (2019) To incorporate the CRC or not – Is this really the question? *The International Journal of Human Rights* 23(3): 425–441.
- Mehrpoor H (2002) *Women's Rights, from ViewPoint of Domestic Law, Islamic Jurisprudence, Principles and International Criteria*. Tehran, Iran: Etelaat Publication.



- Mir-Hosseini Z (1996) Stretching the limits: A feminist reading of the Shari'a in Iran Today. In: Yamani M (ed.) *Feminism and Islam: Legal and Literary Perspectives*. London: Ithaca Press, 284–320.
- Moghadam V (1999) Gender and globalization: Female labour and women's mobilization. *Journal of World-Systems Research* 5(2): 301–314.
- Mojab S (1995) Islamic feminism: Alternative or contradiction? *Firewood* 47.
- Motahhari M (1979) *Nezam-e Hoghugh-e Zan Dar Islam [The System of Women's Rights in Islam]*. Qom, Iran: Sadra Publishers.
- National Juvenile Defender Center (NJDC) (2020) *Minimum Age for Delinquency Adjudication – Multi-Jurisdiction Survey*. Washington, DC: NJDC. Available at: <https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/>
- Paidar P (2001) Gender of democracy: The encounter between feminism and reformism in contemporary Iran (UNRISD Programme Paper on Democracy, Governance and Human Rights, No: 6). Available at: [https://www.unrisd.org/80256B3C005BCCF9/\(httpPublications\)/A9172CAAB13EA61480256B5E00395FFD?OpenDocument](https://www.unrisd.org/80256B3C005BCCF9/(httpPublications)/A9172CAAB13EA61480256B5E00395FFD?OpenDocument)
- Pasko L (2017) Beyond confinement: The regulation of girl offenders' bodies, sexual choices and behavior. *Women and Criminal Justice* 21: 14–20.
- Quennerstedt A (2012) Transforming children's human rights – From universal claims to national particularity. In: Freeman M (ed.) *Law and Childhood Studies*. Oxford: Oxford University Press, 104–116.
- Rajabi-Ardeshiri M (2009) The rights of the child in the Islamic context: The challenges of the local and the global. *International Journal of Children's Rights* 17: 475–489.
- Save the Children (2009) What happened? A study on the impact of the Convention on the Rights of the Child in five countries: Estonia, Nepal, Peru, Uganda and Yemen. Available at: <https://resourcecentre.savethechildren.net/node/2910/pdf/2910.pdf> (accessed 2 March 2021).
- Schabas WA (1996) Reservations to the Convention on the Rights of the Child. *Human Rights Quarterly* 18: 472–491.
- Thomas N (2011) *Children's Rights: Policy into Practice*. Centre for Children and Young People Papers, Southern Cross University. Available at: <https://silo.tips/download/childrens-rights-policy-into-practice>
- United Nations (2020) United Nations treaty collection. Available at: <https://treaties.un.org/> (accessed 9 October 2020).
- United Nations Committee on the Rights of the Child (UNCRC) (1995) General day of discussion: The girl child (CRC/C/, 38). Available at: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx> (accessed 2 March 2021).
- United Nations Committee on the Rights of the Child (UNCRC) (2016a) Concluding observations on the combined third and fourth periodic reports of the Islamic Republic of Iran (CRC/C/IRN/CO/3-4). Available at: <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>
- United Nations Committee on the Rights of the Child (UNCRC) (2016b) Concluding observations on the combined third and fourth periodic reports of Ireland (CRC/C/IRL/CO/3-4). Available at: <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>
- United Nations Committee on the Rights of the Child (UNCRC) (2019) General comment no. 24 (201x), replacing general comment no.10 (2007): Children's rights in juvenile justice. Available at: <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/DCI3.pdf>
- United Nations Convention on the Rights of the Child (UNCRC) (1989) Available at: <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules') (n.d.). Available at: [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Admin\\_of\\_Juvenile\\_Justice\\_Beijing\\_Rules.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Admin_of_Juvenile_Justice_Beijing_Rules.pdf)
- Viterbo H (2012) The age of conflict: Rethinking childhood, law, and age through the Israeli-Palestinian case. In: Freeman M (ed.) *Law and Childhood Studies*. Oxford: Oxford University Press, 133–155.
- Watson D, Cheney K and Ezzat HR (2015) Children and young people in times of conflict and change: Child rights in the Middle East and North Africa. *Global Studies of Childhood* 5(2): 115–121.

Yeganeh N (1982) Women's struggle in the Islamic Republic of Iran. In: Tabari A and Yeganeh N (eds) *In the Shadow of Islam: The Women's Movement in Iran*. London: Zed Press, 5–25.

### **Author biographies**

**Jo Staines** is a Senior Lecturer in Childhood and Youth Justice at the University of Bristol. Her research primarily focuses on children's involvement in offending behaviour, and the intersection between state care and justice systems.

**Nadia Aghtaie** is a Senior Lecturer in Gender and Violence. Her research interests and publications include gender violence among young people and adults within national and international contexts and gender violence and faith.

**Jessica Roy** is a lecturer in child and family welfare at the University of Bristol. Her research primarily focuses on the ways in which children experience harm, and how social work and clinical practice can be improved to support and protect them.